

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SERGEANT GARY A. STEIN, United States Marine Corps, Camp Pendleton, California 92055,

vs. Plaintiff,

COLONEL C.S. DOWLING, Commander, Weapons and Field Training Battalion, Camp Pendleton, California 92055; RAY MABUS, SECRETARY OF THE UNITED STATES NAVY, The Pentagon, Washington, D.C.; UNITED STATES DEPARTMENT OF DEFENSE, The Pentagon, Washington, D.C.; UNITED STATES OF AMERICA; and BRIGADIER GENERAL DANIEL YOO,

Defendants.

CASE NO. 12-CV-0816-H (BGS)

ORDER:

(1) DENYING PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER WITHOUT PREJUDICE; AND

(2) SCHEDULING ORDER

On April 3, 2012, Plaintiff Sergeant Gary A. Stein ("Plaintiff" or "Stein") filed a complaint against Defendants, along with an *ex parte* motion for temporary restraining order and order to show cause why a preliminary injunction should not issue. (Doc. Nos. 1 & 2.) The Court held a hearing on April 4, 2012, and denied Plaintiff's motion for temporary restraining order without prejudice. (Doc. Nos. 6 & 10.) On April 5, 2012, the military held Plaintiff's administrative separation proceedings and recommended discharging Plaintiff with other than honorable discharge. On April 6, 2012, Plaintiff filed a renewed motion for

1 temporary restraining order and order to show cause why preliminary injunction should not
2 issue. (Doc. No. 15.) The Court held a hearing on Plaintiff's renewed motion on
3 April 6, 2012. Gary G. Kreep, David Loy, and J. Mark Brewer appeared for Plaintiff, and
4 Thomas C. Stahl appeared for Defendants.

5 Plaintiff challenges the legality of the military proceedings instituted against him based
6 on his Due Process Fifth Amendment rights and First Amendment free speech rights. (Doc.
7 No. 15.) Yesterday, the administrative separation board held a fifteen hour hearing on
8 Plaintiff's separation proceedings before recommending that Plaintiff be discharged with other
9 than honorable discharge. Plaintiff's counsel maintains that they were not permitted to submit
10 relevant defense evidence at the hearing, in violation of other Due Process rights.

11 The Court has not received a transcript of the administrative separation proceedings.
12 After applying the Mindes test, the Court again denies Plaintiff's request for a temporary
13 restraining order without prejudice. See Mindes v. Seaman, 453 F.2d 197 (5th Cir. 1971);
14 Wenger v. Monroe, 282, F.3d 1068, 1073 (9th Cir. 2002).

15 Additionally, the Court sets a hearing on Plaintiff's motion for preliminary injunction
16 for **April 13, 2012 at 9:00 a.m.** Both parties may file a brief by **April 12, 2012 at 9:00 a.m.**

17 **IT IS SO ORDERED.**

18 Dated: April 6, 2012

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22 MARILYN L. HUFF, District Judge
23 UNITED STATES DISTRICT COURT
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